

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

12 Civ.

JAYSON SANTANA,

Defendant,

PETITION FOR WRIT OF ERROR CORAM NOBIS
IN 01—CR—00320 (JSR)

Defendant-Petitioner Jayson Santana (“Petitioner” or “Mr. Santana”) by his undersigned attorney, Thomas E. Moseley, submits this petition in support of relief by coram nobis vacating his guilty plea in United States v. Santana, 01 Cr. 00320 (JSR). This court has jurisdiction over this matter as part of the original criminal jurisdiction of federal courts under Article III of the United States Constitution and pursuant to 28 U.S.C. §1651 and 28 U.S.C. §2241.

1. Petitioner was born in the Dominican Republic, has been granted lawful permanent residence in the United States, resides within the Southern District of New York and previously entered a guilty plea before this Court on May 23, 2001. A copy of the docket sheet in his case is attached as Exhibit A.

2. On or about February 27, 2001, Petitioner was arrested on charges of violating 21 U.S.C. §841. Following advice of retained counsel, Mr. Santana entered a guilty plea before this Court on May 23, 2001 to a one count information charging him with a violation of 21 U.S.C. §§ 812, 841(a)(1). At no time prior to entering this guilty plea did his criminal defense counsel advise Petitioner that a guilty plea would have any adverse immigration consequences. Similarly,

defense counsel did not attempt to negotiate a plea that would have eliminated or substantially reduced the risk of adverse immigration consequences. On October 12, 2001, this Court sentenced the Petitioner to probation for 36 months with six months home detention, which Mr. Santana completed without incident. If Mr. Santana had been properly advised of the immigration consequences of his guilty plea, he would not have pleaded guilty and, instead, would have gone to trial on the charges. In addition, if defense counsel had been aware of the immigration consequences of the guilty plea and familiarized himself with immigration law in this area, he could have negotiated a plea to an offense carrying the same sentence but not making the Petitioner deportable.

4. Petitioner's application for a certificate of United States citizenship as a derivative was recently denied and Petitioner is subject to the institution of deportation proceedings and detention by United States Immigration & Customs Enforcement at any time.

5. The failure to advise Petitioner of the immigration consequences of his guilty plea and the failure to make any attempt to negotiate a guilty plea that would have eliminated or even reduced the likelihood of adverse immigration consequences deprived Mr. Santana of the effective assistance of counsel contrary to the Sixth Amendment of the United States Constitution as held by the Supreme Court in Padilla v. Kentucky, 2010 U.S. LEXIS 2928 (Mar. 31, 2010) and Missouri v. Frye, Sup. Ct. Dkt. No. 10-444 (Mar. 21, 2012).

WHEREFORE, defendant-petitioner Jayson Santana respectfully requests that the Court direct a response, fix a briefing schedule in this matter, set this petition down for a hearing and vacate the conviction.

Dated: March 22, 2012
Newark, New Jersey

/s/Thomas E. Moseley
THOMAS E. MOSELEY
One Gateway Center--Suite 2600
Newark, New Jersey 07102
Tel. (973) 622-8176
Attorney for Defendant-Petitioner Robert Desrosiers

Exhibit A

CLOSED

**U.S. District Court
Southern District of New York (Foley Square)
CRIMINAL DOCKET FOR CASE #: 1:01-cr-00320-JSR-1**

Case title: USA v. Santana
Magistrate judge case number: 1:01-mj-00525

Date Filed: 04/05/2001
Date Terminated: 10/11/2001

Assigned to: Judge Jed S. Rakoff

Defendant (1)

Jayson Santana
TERMINATED: 10/12/2001
also known as
"Anthony,"

represented by **Steven Adam Rubin**
Breschel & Rubin, LLP
350 Fifth Avenue, Suite 4610
New York, NY 10118
212-643-5402
Fax: (212) 629-8969
Email: stevenadamrubin@msn.com
TERMINATED: 10/12/2001
LEAD ATTORNEY
Designation: Retained

Steven M Statsinger
Federal Defenders of New York Inc.
(NYC)
52 Duane Street
10th Floor
New York, NY 10007
212-417-8700
Fax: 212-571-0392
Email: steve_statsinger@fd.org
TERMINATED: 10/12/2001
LEAD ATTORNEY
Designation: Public Defender or
Community Defender Appointment

Pending Counts

21:841A=ND.F NARCOTICS - SELL,
DISTRIBUTE, OR DISPENSE - (Title
21 USC Sections 812, 841(a)(1) and
841(b)(1)(C).)
(1s)

Disposition

Probation: 36 months.

Highest Offense Level (Opening)

Felony

Terminated Counts

21:841B=ND.F NARCOTICS - SELL,
DISTRIBUTE, OR DISPENSE
(DISTRIBUTION OF 3 KILOGRAMS
OF COCAINE)
(1)

Disposition

Original Indictment is dismissed on the
motion of the United States.

Highest Offense Level (Terminated)

Felony

Complaints

None

Disposition**Plaintiff**

USA

represented by **Miriam Hechler Baer**
U.S. Attorney's Office, SDNY (St
Andw's)
One St. Andrew's Plaza
New York, NY 10007
(212) 637-2550
Fax: (212) 637-2429
LEAD ATTORNEY

| Date Filed | # | Docket Text |
|-------------------|----------|---|
| 02/27/2001 | | ARREST of Jayson Santana [1:01-m -525] (gq) (Entered: 03/28/2001) |
| 03/27/2001 | 1 | COMPLAINT as to Jayson Santana in violation of 21 U.S.C. 841. (signed by Magistrate Judge Theodore H. Katz) [1:01-m -525] (gq) (Entered: 03/28/2001) |
| 03/27/2001 | 2 | CJA 23 Financial Affidavit as to Jayson Santana : (Signed by Magistrate Judge Theodore H. Katz) [1:01-m -525] (gq) (Entered: 03/28/2001) |
| 03/27/2001 | 3 | NOTICE of Appearance for Jayson Santana by Attorney Steven Statsinger [1:01-m -525] (gq) (Entered: 03/28/2001) |
| 03/27/2001 | 4 | ORDER Appointing Federal Public Defender for Jayson Santana. [1:01-m -525] (gq) (Entered: 03/28/2001) |
| 03/27/2001 | | First Appearance as to Jayson Santana held. Deft appears with Legal Aid atty Steven Statsinger. AUSA Miriam Baer present for the gov't. Deft to be detained based on risk of flight. Preliminary Examination set for 4/10/01 for Jayson Santana ; (Mag. Judge Katz). [1:01-m -525] (gq) (Entered: 03/28/2001) |
| 04/05/2001 | 6 | INDICTMENT as to Jayson Santana (1) count(s) 1 (Preliminary Examination cancelled.) (jm) (Entered: 04/09/2001) |

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| 04/05/2001 | | ORAL ORDER as to Jayson Santana . Case assigned to Judge Rakoff. (Entered by Magistrate Judge Henry B. Pitman) (bw) (Entered: 04/11/2001) |
| 04/06/2001 | 5 | NOTICE of Appearance for Jayson Santana by Attorney Steven Rubin [1:01-m-525] (jm) (Entered: 04/09/2001) |
| 04/10/2001 | | Arraignment as to Jayson Santana held Jayson Santana (1) count(s) 1 before Judge Jed S. Rakoff. Deft present with attorney Steven Adam Rubin. AUSA Miriam Baer and Court reporter Guido Tascione. Deft entered a plea of not guilty to indictment. Discovery is to be completed by 5/4/01. The Court scheduled a plea date for 5/3/01. Time until 5/3/01 is excluded in the interest of justice pursuant to 18 USC 3161. Bail set at \$75,000 PRB secured by \$5,000 cash cosigned by 3 cosigners including common law wife, surrender travel documents, pretrial supervision including drug testing if necessary. The defendant continued detained. (sl) (Entered: 04/12/2001) |
| 04/10/2001 | | PLEA entered by Jayson Santana . Court accepts plea. Not Guilty: Jayson Santana (1) count(s) 1 (Terminated motions -) (sl) (Entered: 04/12/2001) |
| 04/11/2001 | 7 | ORDER as to Jayson Santana, that Jayson Santana, the defendant, shall be released on bail pursuant to the following conditions (a) the defendant must sign a \$75,000 personal recognizance bond; (b) the bond must be secured with \$5000 cash and co-signed by 3 financially responsible persons, including the defendant's common law wife, Rafaela Vargas; (c) the defendant msust surrender any travel documents, including any valid or expired p[assports; (d) the defendant's travel is restricted to the Southern and Eastern Districts of New York; and (e) the defendant shall have strict pretrial supervision, including drug treatment and testing as necessary. The defendant is not to be released until all the above bail conditions are met. (Signed by Judge Jed S. Rakoff); Copies mailed. (mr) (Entered: 04/12/2001) |
| 04/17/2001 | 8 | Order of advice of penalties and sanctions as to Jayson Santana. (mr) (Entered: 04/17/2001) |
| 04/17/2001 | 9 | APPEARANCE BOND filed by Jayson Santana in Amount \$ 75,000 PRB to be secured by \$5000 cash and co-signed by 3 FRP's. Including the defendants common law wife, Rafaela Vargas. Defendant must surrender any travel documents. Including any valid or expired passports. The defendants travel is restricted to the Southern and Eastern. The defendant shall have strict pretrial supervision, including drug treatment and testing as necessary. Defendant is not to be released until all these conditions are met. (mr) (Entered: 04/17/2001) |
| 04/17/2001 | 10 | ARREST WARRANT Returned Executed as to Jayson Santana on 4/3/01 (mr) (Entered: 04/17/2001) |
| 05/03/2001 | | Pretrial Conference as to Jayson Santana held. Deft present with atty Steven Adam Rubin, AUSA Kathleen Failla for AUSA Miriam Baer and Court reporter Tom Murray. Deft request an adjournment of plea scheduled for this date. The Court gave the deft until May 21st to file any motions. The Court scheduled another pre-trial conference for May 23rd at 12:30 p.m. The Court also scheduled a trial date for June 4th at 9:00 a.m. The deft continued released on bail. TIME IS NOT EXCLUDED. (Held before Judge Rakoff) (bw) (Entered: 05/07/2001) |

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| 05/03/2001 | | ORAL ORDER as to Jayson Santana . SET scheduling order deadlines: Motion Filing deadline set to 5/21/01 for Jayson Santana; Pretrial Conference set for 12:30 p.m. 5/23/01 for Jayson Santana; Jury Trial set for 9:00 a.m. 6/4/01 for Jayson Santana. (Entered by Judge Jed S. Rakoff) (bw) (Entered: 05/07/2001) |
| 05/23/2001 | 11 | WAIVER OF INDICTMENT by Jayson Santana. (bw) (Entered: 06/04/2001) |
| 05/23/2001 | 12 | (S1) SUPERSEDING INFORMATION as to Jayson Santana (1) count(s) 1s. (bw) (Entered: 06/04/2001) |
| 05/23/2001 | | Arraignment as to Jayson Santana held: Jayson Santana (1) count(s) 1s. Waiver of Indictment filed and Information filed. Change of plea held. Deft present w/atty Steven Adam Rubin. AUSA Miriam Baer and Court reporter Tom Murray. Deft withdrew his plea of not guilty and entered a plea of guilty. PSI ordered. Sentencing set for September 13, 2001 at 4:30 p.m. Deft continued released on bail. (Held before Judge Jed S. Rakoff) (bw) (Entered: 06/04/2001) |
| 05/23/2001 | | PLEA entered by Jayson Santana. Court accepts plea. Guilty: Jayson Santana (1) count(s) 1s. (bw) (Entered: 06/04/2001) |
| 05/23/2001 | | Court Orders pre-sentence investigation as to Jayson Santana. (bw) (Entered: 06/04/2001) |
| 05/23/2001 | | Sentencing set for 4:30 p.m. 9/13/01 for Jayson Santana: Jayson Santana (1) count(s) 1s. (bw) (Entered: 06/04/2001) |
| 07/09/2001 | 13 | TRANSCRIPT of record of proceedings as to Jayson Santana for dates of 5/3/01. (gmo) (Entered: 07/09/2001) |
| 10/11/2001 | | Sentencing held Jayson Santana (1) count(s) 1s (ac) (Entered: 10/16/2001) |
| 10/12/2001 | | DISMISSAL of Count(s) on Government Motion as to Jayson Santana. Counts Dismissed: Jayson Santana (1) count(s) 1 (ac) (Entered: 10/16/2001) |
| 10/12/2001 | 14 | FILED JUDGMENT IN A CRIMINAL CASE (For offenses committed on or after November 1, 1987). Deft Jayson Santana (1) pleaded guilty to count(s) 1s. Original Indictment is dismissed on the motion of the United States. Special Assessment: \$100.00 due immediately. Probation: 36 months. The Deft shall not possess a firearm. Special Conditions of Supervision: The Deft is to report to the nearest probation office within 72 hours of imposition of sentence. The Deft shall comply with the conditions of home confinement for a period of 6 months. During this period of time the Deft shall remain at his place of residence except for employment and other activities approved by the probation officer. The Deft will maintain a telephone at his place of residence without call forwarding, a modem, caller ID, call waiting, or portable cordless telephones for the above period. The Deft shall comply with the directives of the Immigration and Naturalization Service and the Immigration laws. The Deft is to be supervised in the district of his residency. Judgment and Commitment issued to U.S. Marshal. Docketed as a Judgment #01,1845, on 10/16/01. (Signed by Judge Jed S. Rakoff) (ac) Modified on 10/17/2001 (Entered: 10/16/2001) |
| 12/04/2001 | 15 | TRANSCRIPT of record of proceedings as to Jayson Santana for dates of |

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| | | 10/11/01 at 2:30 p.m., before Judge Jed S. Rakoff. (jco) (Entered: 12/05/2001) |
| 12/12/2001 | | Payment of Fine by Jayson Santana in the amount of \$100.00: Date Received: 12/12/01. (mn) (Entered: 12/12/2001) |
| 08/07/2002 | 16 | TRANSCRIPT of record of proceedings as to Jayson Santana for dates of 5/23/01 at 12:45 p.m., before Judge Jed S. Rakoff. (ph) (Entered: 08/08/2002) |
| 12/07/2011 | 17 | TRANSCRIPT of Proceedings (Plea) as to Jayson Santana held on May 23, 2001 12:45 p.m. before Judge Jed S. Rakoff. (bw) (Entered: 12/08/2011) |

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| Billable Pages: | 4 | Cost: | 0.40 |

(VERIFICATION)

I, Triundy Joaquin Santana also known as Jayson Santana, declare under penalty of perjury in accordance with 28 U.S.C. § 1746 as follows:

1. I am the Defendant-Petitioner and plaintiff in this matter and have reviewed all facts alleged this amended petition and they are true to the best of her knowledge, information and belief.

Executed on March 23, 2012

/s/Triundy Joaquin Santana

TRIUNDY JOAQUIN SANTANA